



CLOSED CASE SUMMARY

ISSUED DATE: MAY 3, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0373

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties POL-6 Employees May Use Discretion	Not Sustained - Lawful and Proper (Expedited)
# 2	15.400 - Domestic Violence Court Orders 15.400-POL 6. Officers May Serve a Protection or Anti-Harassment Order During an Investigation of Violation of the Order	Not Sustained - Lawful and Proper (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 (NE#1) used unreasonable discretion by declining to trespass Community Member #1 (CM#1)—the Complainant's neighbor—from her property. The Complainant also alleged NE#1 improperly served her with an Anti-Harassment Order.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified that NE#1 may have served an incomplete Domestic Violence/Ant-Harassment Order packet and inaccurately documented the type of order he served. Those minor policy violations (SPD Policy 15.400-POL-4) were returned to NE#1's chain of command for Supervisor Action.

This case was designated as an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employee. As such, OPA did not interview the involved employee in this case. OIG also certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant submitted an online OPA complaint. It alleged NE#1 responded to her home based on CM#1's false allegation. The Complainant wanted CM#1 trespassed from the Complainant's property. Instead, NE#1 served the Complainant a "copy of a petition" that CM#1 filed against her. The Complainant noted the petition was "only a copy," and CM#1 handed NE#1 the documents on the scene. The Complainant also alleged NE#1 served her with incomplete paperwork.



OPA opened an intake investigation. During its investigation, OPA reviewed the computer-aided dispatch (CAD) call report, incident report, court records, and body-worn video (BWV). OPA attempted to interview the Complainant, but the Complainant only provided OPA with the paperwork NE#1 served.

a. Computer-Aided Dispatch Data

CAD indicated that on October 30, 2022, CM#1 called 9-1-1 to report Community Member #2 (CM#2)—the Complainant’s boyfriend—came to CM#1’s door and tried to intimidate him. CM#1 reported he had a “no contact order” against the Complainant, but the Complainant was not yet served. Dispatch later attached a temporary anti-harassment order to the call. It showed the order was issued on October 21, 2022, and listed the Complainant as the respondent and CM#1 as the petitioner (protected party).

b. Incident Report

NE#1 wrote the related incident report. NE#1 wrote that CM#1 explained he had an unserved anti-harassment order against the Complainant involving felony harassment. Specifically, CM#1 reported the felony harassment incident stemmed from CM#1 calling the police on CM#2 for walking onto CM#1’s porch, making CM#1 feel unsafe.

NE#1 wrote he asked CM#1 for a copy of the order. NE#1 also indicated CM#1 asked for CM#2 to be trespassed from his property. NE#1 wrote he served the Complainant with the anti-harassment order and trespassed CM#2.

NE#1 wrote that the Complainant and CM#2 asked for CM#1 to be trespassed from their property. NE#1 declined due to the retaliatory nature of the request and insufficient evidence that CM#1 entered their property. NE#1 wrote the Complainant showed him a video of CM#1 on a “shared driveway between two houses.” NE#1 wrote that he advised both parties that neither could trespass on a shared driveway.

c. Court Records

OPA reviewed copies of the anti-harassment order from the Complainant, CM#1, and SPD’s domestic violence unit. The relevant part listed CM#1 as the petitioner (protected party) and the Complainant as the respondent.

d. Body-Worn Video (BWV)

NE#1’s interactions with CM#1, the Complainant, and CM#2 were recorded on BWV. Generally, BWV was consistent with the incident report.

CM#1 gave NE#1 the anti-harassment order. CM#1 explained the order was unserved. CM#1 said CM#2 confronted CM#1 the prior night about calling the police on the Complainant. NE#1 asked for a copy of the court packet, which CM#1 produced. CM#1 and his wife also told NE#1 they wanted CM#2 trespassed from their property indefinitely.

NE#1 spoke with the Complainant and CM#2. The Complainant confirmed her identity, and NE#1 served the anti-harassment order. NE#1 also told CM#2 he was prohibited from CM#1’s property. The Complainant alleged CM#1 entered her front yard, which CM#1 denied.



The Complainant showed NE#1 a video showing CM#1 entering a shared driveway.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties POL-6 Employees May Use Discretion

The Complainant alleged NE#1 used improper discretion by trespassing CM#2 from CM#1's property but not trespassing CM#1 from the Complainant's property.

"Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." SPD Policy 5.001-POL-6. Further, "Discretion is proportional to the severity of the crime or public safety issue being addressed." *Id.*

Here, no policy requires an officer to trespass someone upon a property owner's request. Moreover, NE#1's incident report documented his decision-making process. Specifically, NE#1 determined the Complainant's request was retaliatory, and there was only evidence that CM#1 entered a shared area (driveway/easement). Overall, NE#1 used reasonable discretion by declining to trespass CM#1.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 - Allegation #2

15.400 - Domestic Violence Court Orders 15.400-POL 6. Officers May Serve a Protection or Anti-Harassment Order During an Investigation of Violation of the Order

The Complainant alleged NE#1 improperly served the anti-harassment order by serving a copy of the order from CM#1 rather than directly from the court.

Officers may serve a copy of protection or anti-harassment orders if, while investigating a violation of the order, the officer determines the respondent was not previously served and needed to learn about the order. *See* SPD Policy 15.400-POL-6.

Here, officers may serve a copy of an anti-harassment order when they determine the respondent was unserved. Moreover, officers may "try to obtain a copy of the order from the petitioner and serve it on the respondent if the respondent is present." SPD Policy 15.400-POL-6. That is precisely what NE#1 did.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**